

Order below Exh. 114 in Spl. Civil Suit No. 676/2012

1] Plaintiff has moved an application for amendment under Order 6 Rule 17 of Code of Civil Procedure amendment for impleading Mangalmurti Developer through proprietor Shri Naresh Thakurdas Wadwani, age 39 yrs, Occu. Business, R/at. Umed Bhavan, Canara Bank building, Station road, Pimpri, Pune 18. It is contended by plaintiff that, the suit property is ancestral property. Defendant No. 1's father Laxman Sakham Kate was close relatives due to which he was residing with the plaintiff and looking after property alongwith his grandfather. However father of defendant No. 1 and later on defendant No. 1 got their names mutated in the cultivation column of the suit property in connivance with Revenue Officer as cultivator. After getting information plaintiff has preferred appeal against the said order due to age and illness and to obtain clear title entire right were given to Mangalmurti Developers permanently by registered sale deed dated 28/09/2012 due to which it is essential and necessary to implead him as plaintiff No. 2. It will not change the nature of suit as it is of formal nature. Hence prayed that, amendment be allowed.

2] No say order was passed against defendant Nos. 5 to 7. Defendant No. 4 has objected the present application by filing his say at Exh. 118 wherein he has contended that, at the time of passing the order on the application of this defendant to vacate

the Ex-parte order of injunction it has come on record that, much prior to filing of the suit, plaintiffs and others had executed a document purported to be the deed of transfer/ assignment with respect to suit property. Therefore on the date of filing of the suit plaintiff could not be the owner of the suit property. Plaintiff realized the fate of the suit and with view to avoid rejection of the plaint has filed the present application. On account of non inclusion of the third party as plaintiff right to get suit dismissed has occurred to the defendant and the said right cannot be taken away under pretext of amendment. No reason has been stated for not joining the third party. Hence prayed that, application be rejected.

3] Heard argument of both the parties. Plaintiff has submitted that, suit property is ancestral property of the plaintiff however he is old person with ailments so he has created interest by document on 28/09/2012 in favour of proposed plaintiff No. 2. Defendant has filed application under Order 9 of CPC as well as while deciding Exh. 5 defendants contend that, plaintiff has suppressed the fact. It is not disputed that the plaintiff has executed the document therefore he is fit to be joined as plaintiff. It will not cause any harm to the defendant. There will be no change in the pleading and nature of the suit. Hence prayed that, application be allowed.

In support of his contention he has relied upon,

(i) Dhanaji Kashinath Shendkar Vs. Khemchand Chawala,

reported in 2011(6) Mh.L.J. 629 wherein the Hon'ble Court has held that, amendment to plaint permissibility - amendment which is necessitated and is essential on account of subsequent event must be allowed.

Perused the citation however the facts are not applicable as the amendment which was sought was with respect to subsequent event. However in the present case the transaction was entered prior to filing of the suit.

(ii) Adam Sorathia Vs. Municipal Corporation of Greater Bombay, reported in 2001(3) Mh.L.J. 288 wherein the Hon'ble Court has held that, presence of person necessary for complete and effectual adjudication such person is proper party though no relief claimed against him.

Perused the citation the facts of the above case are not applicable as the proposed party was the landlord of the suit property and in those circumstances Hon'ble Court has held that, the landlords are the proper party though the relief is sought against the corporation.

(iii) Vitthalrao Damodar Hapat Vs. Matru Seva Sangh Warora, reported in 2009(4) Mh.L.J. 508 wherein the Hon'ble Court has held that, non joinder of necessary parties - power of the court - when a suit is instituted in the name of wrong plaintiff or defendant the right plaintiff or defendant can be added as plaintiff or defendant.

Perused the citation in the above case plaintiff had moved an application for impleading the trustees of the trust. It was held by the Hon'ble Court that, when the suit is instituted in the name of wrong plaintiff or defendant the right plaintiff or defendant can be added. However in the present case the plaintiff had already sold

the property to the proposed plaintiff. In such circumstances it cannot be said that, proposed plaintiff was wrongly not added. Hence the above citation is not applicable.

4] On the other hand defendant has objected this application that, plaintiff has filed the present application when it was observed by the court that, plaintiff has already seized to be in possession of the suit property. The third party i.e. proposed plaintiff No. 2 has not made any application under Order 1 Rule 10 of CPC to implead him in the present suit. Plaintiff has no locus standi to proceed with the suit. Amendment will change the nature of the suit. After deliberate suppression of the facts the suit has been filed. Hence prayed that, application be rejected.

5] Order 6 Rule 17 of CPC contemplates that, the court may at any stage of the proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

6] On perusing the application plaintiff has stated that, due to old age and in order to clear the title plaintiff has transferred his rights in Mangalmurti Developers by registered sale deed on 28/09/2012 however on perusing the document it appears that, the said document was executed on 22/07/2011

which was much prior to the filing of the suit.

7] The amendment which is sought by the plaintiff is with respect to the parties of the suit and not pleadings. It appears from the application that, plaintiff wants to implead third party Mangalmurti Developers as plaintiff No. 2. It also appears that, plaintiff has entered in to registered sale deed with proprietor Naresh Thakurdas Wadhwani on 22/07/2011 which is prior to the filing of the suit yet the suit was filed by the plaintiff. In such circumstances the amendment which is sought is not necessary for determining the real issues between the parties as the suit is not filed by the Mangalmurti Developers. There is no cause of action for the plaintiff to file the present suit. In such circumstances the question of impleading plaintiff does not arise as plaintiff has filed the present suit seeking declaration that he is the owner of the suit property when he has transferred his right in the suit property to Mangalmurti Developers. In such circumstances the amendment application cannot be entertained. Hence following order is passed.

ORDER

- 1] Application stands rejected.
- 2] No order as to costs.

Date : 09/06/2015

(Smt V.S. Malkalpatte-Reddy)
7th Jt. Civil Judge S.D. Pune.

I Affirm that the contents of this PDF file Judgment are same word for word as per Original Judgment.

Name of Steno: Smt. S.P. Bhagwat, (L.G.)

Court's name: 7th Jt. Civil Judge, S.D. Pune.

Date of Judgment : 09/06/2015

Judgment signed by Presiding officer on: 12/06/2015

P. D.F. Date: 12/06/2015